

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel. W.A.
DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA and
OKLAHOMA SECRETARY OF THE
ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR
NATURAL RESOURCES FOR THE
STATE OF OKLAHOMA**

PLAINTIFFS

v. CASE NO.: 4:05-CV-329-TCK-SAJ

**TYSON FOODS, INC., TYSON
POULTRY, INC., TYSON CHICKEN,
INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS,
INC., CAL-MAINE FARMS, INC.
CARGILL, INC., CARGILL TURKEY
PRODUCTION, LCC, GEORGE'S,
INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC. SIMMONS
FOODS, INC., and WILLOW BROOK
FOODS, INC.**

DEFENDANTS

**DEFENDANTS CARGILL'S ADOPTION OF THE JOINT RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION FOR ENTRY OF PROPOSED CONFIDENTIALITY
ORDER AND SUPPLEMENTAL RESPONSE IN OPPOSITION**

COME NOW Cargill, Inc. ("Cargill"), and Cargill Turkey Production, LLC ("CTP"), and by and through their attorneys, and submit the following as their Response to Plaintiff's Motion for Entry of Proposed Confidentiality Order (Dkt. No. 573). Cargill and CTP join in Defendants' Joint Response in Opposition to Plaintiffs' Motion for Entry of Proposed Confidentiality Order (Dkt. No. 641) and provide the following response to address Plaintiffs' proposed procedure for challenging a confidential designation.

I. Introduction

Cargill and CTP agree with Plaintiffs and its co-Defendants that the entry of an appropriate confidentiality order is necessary in this case. Cargill and CTP join with the Defendants in moving this Court to enter the confidentiality order attached as Exhibit 1 attached to Defendants' Joint Response in Opposition to Plaintiffs' Motion for Entry of Proposed Confidentiality Order (Dkt. No. 641). Defendants' proposed Confidentiality Order provides a manageable and appropriate procedure for challenging documents designated as confidential. *See* Defendants Proposed Protective Order, Exhibit 1 to Defendants' Joint Response (Dkt. No. 641), ¶ 8. Cargill and CTP object to Plaintiffs' proposed procedure for challenging documents designated as set forth below.

II. Plaintiffs' Proposed Procedure for Challenging Confidential Designations is Unworkable and Therefore Unduly Burdensome

Under Plaintiffs' proposal, the party designating the documents as confidential must move the Court for an Order confirming the confidential designation if that designation is challenged. Plaintiffs' proposed procedure allows the party challenging the confidential designation to make its challenge at anytime regardless of when the confidential document was produced, while the designating party must file its motion with the Court within 15 days of said notice. While the written notice must state the specific basis for the challenge, it must not advise why further dissemination of the document is necessary. *See* Pls. Proposed Order, ¶ 8. This procedure places an undue burden on the party designating the document as confidential.

The Defendants in this litigation are competitors. There are many aspects of their business operations that if shared with their competitors or the general public, would result in injury to their business. If a Defendant is required to file a written motion with the Court setting forth the reasons why the confidential designation is required, then the confidentiality of said

document will effectively be destroyed. In such an instance, the burden is properly on the Plaintiffs seeking to further disseminate such documents to move the Court to allow further dissemination. In response, the Defendants can provide the documents to the Court for an *in camera* review without the fear of destroying the confidential nature of the documents. Defendants' proposed procedure is similar to the common practice for challenging documents designated as privileged on a privilege log.

Defendants' proposed Confidentiality Order allows counsel, experts, court reporters, court personnel and in some instances the parties themselves to review and use the documents as needed for the litigation.¹ The party challenging the confidential designation is in effect stating that they want to use this information for non-litigation purposes. The burden to file a motion with the Court is properly on the party challenging the confidentiality designation to explain why the information should be used for a non-litigation purpose. It is common in such high profile complex litigation to require the party challenging the confidential designation to move the Court to allow it to further disseminate such information. *See* First Amended Confidentiality Order, *In Re CFS-Related Securities Litigation*, Case 4:99-CV-00825-TCK-SAJ, ¶ 14 (Dkt. 422).

III. CONCLUSION

For the foregoing reasons, Cargill and CTP request that this Court deny Plaintiff's Motion for Entry of Proposed Confidentiality Order. Cargill and CTP respectfully request that this Court enter the Defendants' Proposed Confidentiality Order that provides a proper procedure for challenging the confidential designation of documents.

¹ Under Defendants' Proposed Protective Order, parties may view all documents except those designated as "Confidential/Attorneys' Eyes Only."

Respectfully submitted:

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**ATTORNEYS FOR CARGILL, INC. and
 CARGILL TURKEY PRODUCTION, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.

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E. Stephen Williams	Douglas Allen Wilson	J. Ron Wright
Lawrence W. Zeringue	Bobby Jay Coffman	

and I further certify that a true and correct copy of the above and foregoing will be mailed via first class U.S. Mail, postage properly paid, on the following who are not registered participants of the ECF System:

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